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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,334	08/28/2001	Y. Denis Yerlikaya	20518/14	7702

7590 01/16/2007
TYCO HEALTHCARE GROUP LLP
ATTEN: Intellectual Property Dept. Docketing Clerk
15 HAMPSHIRE STREET
MANSFIELD, MA 02048

EXAMINER

JAGAN, MIRELLYS

ART UNIT	PAPER NUMBER
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2859

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/942,334

Applicant(s)

YERLIKAYA ET AL.

Examiner

Mirellys Jagan

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,8,9,11,13,14,16,18,19 and 21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8,9,11,13,14,16,18,19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 3-5, 9, 11, 13, 18, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,008,614 to Turner et al [hereinafter Turner] in view of U.S. Patent 5,720,293 to Quinn et al [hereinafter Quinn].

Turner discloses an electronic thermometer comprising:

an interchangeable, removable module (10) having a temperature probe (14) with a thermistor as a temperature sensor, mating terminal, probe storage chamber (12), and a cable assembly (16) having a connecting portion with mating terminals (32, 34) for electrically connecting to a portable temperature calculating unit (18);

wherein the temperature calculating unit (18) is adapted for receiving the removable module and removably mating to the module, receives the thermistor signal for providing a temperature measurement, has a header assembly with terminals (36, 38) in electrical connection with a microprocessor system, and a probe cover storage chamber; the header assembly terminals removably mate with terminals of the removable module; and the probe storage chamber is able

Art Unit: 2859

to prevent storage of the probe while a cover is installed on the probe (see figures 2, 3, and 5; column 3, lines 18-44; and column 4, lines 56-67).

Turner does not disclose the removable module having a memory for storing predetermined calibration information specific to the thermistor at the time of manufacture for use by the temperature calculating unit for calibrating the thermistor, probe-specific algorithm parameters, or probe identifying information, wherein the memory is capable of electrical communication with the temperature calculating unit when the removable module is installed to the temperature calculating unit, and includes calibration point parameters at different temperatures taken during manufacture of the module for calibrating the probe, and is incorporated in a connection portion in the probe assembly of the removable module, the memory being an EEPROM, and the memory storing a unique ID number associated with the probe that is a pre-programmed and validated EEPROM registration number for determining the type of module; the removable module having the probe cover storage chamber; and the calibration parameters being resistance values.

Quinn discloses an electronic thermometer comprising a removable unit that includes a temperature sensor and a memory (EEPROM) for storing calibration information, probe-specific algorithm parameters, or probe identifying information, wherein the memory is capable of electrical communication with a temperature-calculating unit when the removable unit installed to the temperature-calculating unit, and includes calibration point parameters at different temperatures for calibrating the probe and is incorporated in the probe assembly of the removable unit, and is incorporated in the probe assembly of the removable unit, and the memory storing a unique ID number associated with the probe that is a pre-programmed and

Art Unit: 2859

validated EEPROM registration number; the sensor being a thermistor and the calibration parameters being resistance values. Quinn teaches that it is useful to provide the memory in the removable unit in order to store patient information and calibration information for ease of use (see abstract).

Referring to claims 1 and 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the thermometer disclosed by Turner by providing a memory in the removable unit, as taught by Quinn, in order to store patient information and calibration information for ease of use.

Furthermore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the thermometer disclosed by Turner and Quinn by taking the calibration reference point parameters during manufacture of the module in order to provide a calibrated thermometer when the thermometer is first used to measure temperature.

In addition, Turner teaches that the removable module is removable in order to prevent the rest of the thermometer housing from being contaminated by a contaminated probe. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the thermometer disclosed by Turner by integrating the probe cover chamber with the removable unit instead of the temperature calculating unit in order to ensure that contaminated probe covers are not used by a clean removable unit when a contaminated probe is replaced.

Referring to claim 5, in utilizing the device disclosed by Turner and Quinn above to measure temperatures, the method steps of claim 5 will be followed.

Art Unit: 2859

Referring to claim 13, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the thermometer disclosed by Turner and Quinn by placing the memory in a connection portion in the probe assembly of the removable module in order to minimize the distance and amount of wiring needed to connect the memory to the temperature calculating unit.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Turner and Quinn, as applied to claims 1, 3-5, 9, 11, 13, 18, and 21 above, and further in view of the Prior Art disclosed by Applicant on page 18, lines 24-27 of the specification [hereinafter Prior Art].

Turner and Quinn disclose an electronic thermometer having all of the limitations of claim 8, as stated above in paragraph 2, except for the EEPROM being a 256 bit, 1-wire, parasite-power EEPROM.

The Prior Art discloses that a 256 bit, 1-wire, parasite-power EEPROM is a known EEPROM that is commercially available from Dallas Semiconductor under the model number DS2430A.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the removable module of the thermometer disclosed by Turner and Quinn by replacing the EEPROM with the EEPROM from Dallas Semiconductor, since the Prior Art discloses that the EEPROM from Dallas Semiconductor is known to be commercially available to one having ordinary skill in the art, and since these EEPROMs are alternative and equivalent means for providing memory in the electronic thermometer.

Art Unit: 2859

4. Claims 14, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner and Quinn, as applied to claims 1, 3-5, 9, 11, 13, 18, and 21, above, and further in view of Denzene.

Turner and Quinn disclose an electronic thermometer having all of the limitations of claims 14, 16, and 19, as stated above in paragraph 2, except for the terminals of the removable module and the temperature-calculating unit being fluid-resistant,

Denzene discloses an electrical device having a connector component that is fluid resistant. The area of the connector component that has connecting terminals is made resistant to fluid incursion in order to prevent the electrical components within the connector from being damaged by liquids (see figures 6 and 7).

Referring to claim 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the removable module and the temperature-calculating unit disclosed by Turner and Quinn by making the mating terminals fluid-resistant, as disclosed by Denzene, since Denzene teaches that making the mating terminals fluid-resistant is beneficial in order to prevent the electrical components within from being damaged by liquids.

Response to Arguments

5. Applicant's arguments have been considered but are not persuasive.

In response to Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies, i.e., a removable probe cover storage chamber, are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the

Art Unit: 2859

claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In this case, the claims claim a “removable module” that has “a probe cover storage chamber”, but fail to claim that the probe cover storage chamber is in itself removable from anything.

In response to Applicant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, i.e., that the Examiner is using the Applicant's invention “to teach the combination of the prior art references” (page 7, lines 4-11 of Applicant's last response), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But, so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the Examiner's conclusion of obviousness is based upon only the teachings of Turner and Quinn, which was knowledge that was within the level of ordinary skill at the time the claimed invention was made, and, therefore, does not include knowledge gleaned only from the Applicant's disclosure.

Applicant's arguments that Turner does not motivate one to integrate the probe cover storage chamber with the replaceable probe are not persuasive since Turner teaches that the removable module is removable in order to prevent the rest of the thermometer housing from being contaminated by a contaminated probe. One having ordinary skill in the art at the time the invention was made would have realized the propensity of contamination in the thermometer of Turner, and would have known the need to avoid contamination, as taught by Turner, and, therefore, would have come to the realization of modifying the thermometer of Turner by

Art Unit: 2859

integrating the probe cover chamber with the removable module instead of the temperature calculating unit in order to ensure that contaminated probe covers are not used by a clean removable module when a contaminated probe is replaced.

Furthermore, Applicant's arguments that Turner's probe covers are retained at the base unit in the receptacle creates an inoperable device are not persuasive since the rejections are not based on the probe covers being retained in the receptacle, but on the covers being retained with the removable module instead in order to ensure that contaminated probe covers are not used by a clean removable module when a contaminated probe is replaced.

Applicant's arguments that Quinn teaches away from the present invention because it extols the catheter assembly having the memory unit are not persuasive since Quinn was not relied upon for teaching this feature. Quinn was relied upon for teaching the provision of a memory in a removable unit in order to store patient information and calibration information for ease of use.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247. The examiner can normally be reached on Monday-Thursday from 8AM to 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2859

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ

January 3, 2007



**GAIL VERBITSKY
PRIMARY EXAMINER**